

**FILED**  
**DISTRICT COURT OF GUAM**

FEB 07 2008 *(ch)*

**JEANNE G. QUINATA**  
**Clerk of Court**

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16 Navigators Insurance Co.,  
17 dba Navigators Protection & Indemnity

18 IN THE DISTRICT COURT OF GUAM

19 UNITED STATES OF AMERICA, ) Civil Case No.: 06-00011  
20 vs. Plaintiff, )  
21 MARWAN SHIPPING & TRADING CO., )  
22 FIVE SEAS SHIPPING CO., LLC, and S.J. )  
23 GARGRAVE SYNDICATE 2724, *in* )  
24 *personam*, )  
25 Defendants. )  
26 AND CROSS-CLAIMS, )  
27 COUNTERCLAIMS, AND CLAIM IN )  
28 INTERVENTION )  
\_\_\_\_\_  
Judge: Honorable Frances Tydingco-Gatewood

S.J. GARGRAVE SYNDICATE 2724's ("Gargrave") FRCP 55(b)(2) Motion for Default Judgment should be denied because it is premature. Currently pending before the Court is NAVIGATORS INSURANCE COMPANY ("Navigators") Motion to Set Aside the Default on the grounds that Navigators was never served with Gargrave's First Amended Third-Party Complaint. Gargrave's motion is premature because the Court has not determined if it has jurisdiction over Navigators to enter a Default in the first place.

SPECIALLY-APPEARING OPPOSITION TO  
GARGRAVE'S MOTION FOR DEFAULT JUDGMENT  
Civ. Case No. 06-00011; Our File No. 2900.81

1 It is axiomatic that before the Court can consider Gargrave's motion for default judgment, it  
2 must first resolve the issue of whether Navigators was ever served with the summons and complaint.  
3 "A person is not bound by a judgment in litigation to which he or she has not been properly made a  
4 party by service of process." Mason v. Genisco Technology Corp., 960 F.2d 849, 851 (9th Cir. 1992)  
5 (citing Yniguez v. Arizona, 939 F.2d 727, 735 (9th Cir. 1991)). On February 5, 2008, Navigators filed  
6 its Motion to Set Aside Default on the grounds that Gargrave's failure to serve Navigators deprives the  
7 Court of "jurisdiction to adjudicate the matters as to" Navigators. Di Vecchio v. Gimbel Bros., 40  
8 FRD 311, 314 (W.D. PA 1966). Navigators has appeared specially to contest Gargrave's purported  
9 service of process. Until the Court resolves this issue, it is premature to consider Gargrave's Motion  
10 for Default Judgment. Therefore, Navigators respectfully requests that the Court first resolve the  
11 dispute of whether Navigators was served before considering Gargrave's Motion for Default  
12 Judgment.  
13  
14

15 DATED: February 7, 2008

16 Respectfully submitted,

17  
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20  
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23 By \_\_\_\_\_  
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